

SECTION I

CONTRACT CLAUSES

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PART II - CONTRACT CLAUSES

SECTION I - CONTRACT CLAUSES

I-1. FAR 52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address:

<http://farsite.hill.af.mil>

I-2. THE FOLLOWING FEDERAL ACQUISITION REGULATION (FAR) CLAUSES ARE INCORPORATED BY REFERENCE:

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52.222-36 AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (APR 1984)

52.222-37 EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (APR 1998)

52.223-2 CLEAN AIR AND WATER (APR 1984)

52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) ALTERNATE I (JULY 1995)

52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (APR 1998)

52.223-12 REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995)

52.223-14 TOXIC CHEMICAL RELEASE REPORTING (OCT 1996)

52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)

52.224-2 PRIVACY ACT (APR 1984)

52.225-3 BUY AMERICAN ACT--SUPPLIES. (JAN 1994), 970.5203-3 Buy American Act Substitute "use" for "deliver" in paragraph (b)

52.225-10 DUTY-FREE ENTRY (APR 1984)

52.225-11 RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (OCT 1996)

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I-3. 52.202-1 DEFINITIONS (OCT 1995) and 952.202-1

- (a) *"Head of Agency"*, means The Secretary, Deputy Secretary or Under Secretary of the Department of Energy and the Chairman, Federal Energy Regulatory Commission.
- (b) *Commercial Component*, means, any component that is a commercial item.
- (c) *Commercial*, item means
 - (1) Any item, other than real property, that is of a type customarily used for non-governmental purposes and that,
 - (i) Has been sold, leased, or licensed to the general public; or
 - (ii) Has been offered for sale, lease, or license to the general public;
 - (2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
 - (3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for,
 - (i) Modifications of a type customarily available in the commercial marketplace; or
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor" modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor.
 - (4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public.
 - (5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services.
 - (i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions, and
 - (ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public.
 - (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed.

- (7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor, or
 - (8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.
- (d) *Component*, means any item supplied to the Federal Government as part of an end item or of another component.
- (e) *Non-developmental item*, means--
- (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
 - (2) Any item described in paragraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or
 - (3) Any item of supply being produced that does not meet the requirements of paragraph (e)(1) or (e)(2) solely because the item is not yet in use.
- (f) *"Contracting Officer"* means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
- (g) Except as otherwise provided in this contract, the term *"subcontracts"* includes, but is not limited to, means purchase orders and changes and modifications to purchase orders under this contract.
- (h) The term *"DOE"*, means The Department of Energy and *"FERC"* means the Federal Energy Regulatory Commission.

I-4. 52.215-19 NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

- (a) The Contractor shall make the following notifications in writing--
- (1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.
 - (2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.
- (b) The Contractor shall--
- (1) Maintain current, accurate, and complete inventory records of assets and their costs;
 - (2) Provide the ACO or designated representative ready access to the records upon request;

- (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and
- (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.
- (c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

I-5. 52.223-11 OZONE-DEPLETING SUBSTANCES (JUN 1996)

Definition

- (a) "*Ozone Depleting Substance*", as used in this clause, means any substance designated as Class I by the Environmental Protection Agency (EPA) (40 CFR Part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or any substance designated as Class II by EPA (40 CFR Part 82), including but not limited to hydrochlorofluorocarbons.
- (b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR Part 82, Subpart E, as follows:

WARNING

Contains (or manufactured with, if applicable) _____*_____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere."

*The Contractor shall insert the name of the substance(s).

I-6. 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (OCT 1995)

Definition.

- (a) *Commercial Item*, as used in this clause, has the meaning contained in the clause at 52.202-1, Definitions.

Subcontract, as used in this clause, includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or Subcontractor at any tier.
- (b) To the maximum extent practicable, the Contractor shall incorporate, and require its Subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.
- (c) Notwithstanding any other clause of this contract, the Contractor is not required to include any FAR provision or clause, other than those listed below to the extent they are applicable and as may be required to establish the reasonableness of prices under part 15, in a subcontract at any tier for commercial items or commercial components:
 - (1) 52.222-26, Equal Opportunity (E.O. 11246);
 - (2) 52.222-35, Affirmative Action for Disabled and Vietnam Era Veterans (38 U.S.C. 4212(a));
 - (3) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793); and
 - (4) 52.247-64, Preference for Privately Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

- (d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

I-7. 952.208-7 TAGGING OF LEASED VEHICLES (APR 1984)

- (a) DOE intends to use U.S. Government license tags.
- (b) While it is the intention that vehicles leased hereunder shall operate on Federal tags, the DOE reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the contractor shall furnish the DOE the documentation required by the State to acquire such tags.

I-8. 952.209-72 ORGANIZATIONAL CONFLICTS OF INTEREST (JUN 1997) (ALTERNATE 1)

- (a) *Purpose.* The purpose of this clause is to ensure that the Contractor (1) is not biased because of its financial, contractual, organizational, or other interests which relate to the work under this contract, and (2) does not obtain any unfair competitive advantage over other parties by virtue of its performance of this contract.
- (b) *Scope.* The restrictions described herein shall apply to performance or participation by the Contractor and any of its affiliates or their successors in interest (hereinafter collectively referred to as "Contractor") in the activities covered by this clause as a Prime Contractor, Subcontractor, co-sponsor, joint venturer, consultant, or in any similar capacity. For the purpose of this clause, affiliation occurs when a business concern is controlled by or has the power to control another or when a third party has the power to control both.
 - (1) *Use of Contractor's Work Product.*
 - (i) The Contractor shall be ineligible to participate in any capacity in Department contracts, subcontracts, or proposals therefore (solicited and unsolicited) which stem directly from the Contractor's performance of work under this contract for a period of five years after the completion of this contract. Furthermore, unless so directed in writing by the Contracting Officer, the Contractor shall not perform any advisory and assistance services work under this contract on any of its products or services or the products or services of another firm if the Contractor is or has been substantially involved in their development or marketing. Nothing in this subparagraph shall preclude the Contractor from competing for follow-on contracts for advisory and assistance services.
 - (ii) If, under this contract, the Contractor prepares a complete or essentially complete statement of work or specifications to be used in competitive acquisitions, the Contractor shall be ineligible to perform or participate in any capacity in any contractual effort which is based on such statement of work or specifications. The Contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the Contracting Officer, in which case the restriction in this subparagraph shall not apply.
 - (iii) Nothing in this paragraph shall preclude the Contractor from offering or selling its standard and commercial items to the Government.
 - (2) *Access to and use of information.*
 - (i) If the Contractor, in the performance of this contract, obtains access to information, such as, department plans, policies, reports, studies, financial plans, internal data protected by the

Privacy Act of 1974 (5 U.S.C. 552a) or, data which has not been released or otherwise made available to the public, the Contractor agrees that without prior written approval of the Contracting Officer it shall not:

- (A) use such information for any private purpose unless the information has been released or otherwise made available to the public;
 - (B) compete for work for the Department based on such information (6) months after either the completion of this contract or until such information is released or otherwise made available to the public, whichever is first;
 - (C) submit an unsolicited proposal to the Government which is based on such information until one year after such information is released or otherwise made available to the public; and
 - (D) release such information unless such information has previously been released or otherwise made available to the public by the Department.
- (ii) In addition, the Contractor agrees that to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. 552a), or other confidential or privileged technical, business, or financial information under this contract, it shall treat such information in accordance with any restrictions imposed on such information.
 - (iii) The Contractor may use technical data it first produces under this contract for its private purposes consistent with subparagraphs (b)(2)(i)(A) and (D) of this clause and the patent, rights in data, and security provisions of this contract.

(c) *Disclosure After Award.*

- (1) The Contractor agrees that, if changes, including additions, to the facts disclosed by it prior to award of this contract, occur during the performance of this contract, it shall make an immediate and full disclosure of such changes in writing to the Contracting Officer. Such disclosure may include a description of any action which the Contractor has taken or proposes to take to avoid, neutralize, or mitigate any resulting conflict of interest. The Department, however, may terminate the contract for convenience if it deems such termination to be in the best interest of the Government.
- (2) In the event that the Contractor was aware of facts required to be disclosed or the existence of an actual or potential organizational conflict of interest and did not disclose such facts or such conflict of interest to the Contracting Officer, DOE may terminate this contract for default.

(d) *Remedies.*

For breach of any of the above restrictions or for nondisclosure or misrepresentation of any facts required to be disclosed concerning this contract, including the existence of an actual or potential organizational conflict of interest at the time of or after award, the Government may terminate the contract for default, disqualify the Contractor from subsequent related contractual efforts, and pursue such other remedies as may be permitted by law or this contract.

(e) *Waiver.*

Requests for waiver under this clause shall be directed in writing to the Contracting Officer and shall include a full description of the requested waiver and the reasons in support thereof. If it is determined to be in the best interests of the Government, the Contracting Officer may grant such a waiver in writing.

(f) *Subcontract.*

- (1) The Contractor shall include a clause, substantially similar to this clause, including this paragraph (f), in subcontracts expected to exceed the simplified acquisition threshold determined in accordance with FAR Part 13 and involving performance of advisory and assistance services as that term is defined at FAR 37.201. The terms "Contract", "Contractor", and "Contracting Officer" shall be appropriately modified to preserve the Government's rights.
- (2) Prior to the award under this contract of any such subcontracts for advisory and assistance services, the Contractor shall obtain from the proposed subcontractor or consultant the disclosure required by DEAR 909.507-1, and shall determine in writing whether the interests disclosed present an actual or significant potential for an organizational conflict of interest. Where an actual or significant potential organizational conflict of interest is identified, the Contractor shall take actions to avoid, neutralize, or mitigate the organizational conflict to the satisfaction of the Contractor. If the conflict cannot be avoided or neutralized, the Contractor must obtain the approval of the DOE Contracting Officer prior to entering into the subcontract.

I-9. 952.217-70 ACQUISITION OF REAL PROPERTY (APR 1984)

- (a) Notwithstanding any other provision of the contract, the prior approval of the Contracting Officer shall be obtained when, in performance of this contract, the Contractor acquires or proposes to acquire use of real property by:
 - (1) Purchase, on the Government's behalf or in the Contractor's own name, with title eventually vesting in the Government.
 - (2) Lease, and the Government assumes liability for, or will otherwise pay for the obligation under the lease as a reimbursable contract cost.
 - (3) Acquisition of temporary interest through easement, license or permit, and the Government funds the entire cost of the temporary interest.
- (b) Justification of and execution of any real property acquisitions shall be in accordance and compliance with directions provided by the Contracting Officer.
- (c) The substance of this clause, including this paragraph (c), shall be included in any subcontract occasioned by this contract under which property described in paragraph (a) of this clause shall be acquired.

I-10. 952.223-75 PRESERVATION OF INDIVIDUAL OCCUPATIONAL RADIATION EXPOSURE RECORDS (APR 1984)

Individual occupational radiation exposure records generated in the performance of work under this contract shall be subject to inspection by DOE and shall be preserved by the contractor until disposal is authorized by DOE or at the option of the contractor delivered to DOE upon completion or termination of the contract. If the contractor exercises the foregoing option, title to such records shall vest in DOE upon delivery.

I-11. 952.224-70 PAPERWORK REDUCTION ACT (APR 1994)

- (a) In the event that it subsequently becomes a contractual requirement to collect or record information calling either for answer to identical questions from 10 or more persons other than Federal employees, or information from Federal employees which is to be used for statistical compilations of general public

interest, the Paperwork Reduction Act will apply to this contract. No plan, questionnaire, interview guide, or other similar device for collecting information (whether repetitive or single-time) may be used without first obtaining clearance from the Office of Management and Budget (OMB).

- (b) The contractor shall request the required OMB clearance from the contracting officer before expending any funds or making public contacts for the collection of data. The authority to expend funds and to proceed with the collection of data shall be in writing by the contracting officer. The contractor must plan at least 90 days for OMB clearance. Excessive delay caused by the Government which arises out of causes beyond the control and without the fault or negligence of the contractor will be considered in accordance with the clause entitled "Excusable Delays," if such clause is applicable. If not, the period of performance may be extended pursuant to this clause if approved by the contracting officer.

I-12. 952.226-71 UTILIZATION OF ENERGY POLICY ACT TARGET ENTITIES (JUN 1996)

Definition.

- (a) *Energy Policy Act Target Groups*, as used in this provision means--
 - (1) An institution of higher education that meets the requirements of 34 CFR 600.4(a) and has a student enrollment that consists of at least 20 percent:
 - (i) Hispanic Americans, i.e., students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or
 - (ii) Native Americans, i.e., American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof.
 - (2) Institutions of higher learning determined to be Historically Black Colleges and universities by the Secretary of Education pursuant to 34 CFR 608.2; and
 - (3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d) or by a woman or women.
- (b) *Obligation.* In addition to its obligations under the clause of this contract entitled Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, the Contractor, in performance of this contract, agrees to provide its best efforts to competitively award subcontracts to entities from among the Energy Policy Act target groups.

I-13. 952.226-72 ENERGY POLICY ACT SUBCONTRACTING GOALS AND REPORTING REQUIREMENTS (JUN 1996)

Definition.

- (a) *Energy Policy Act Target Groups*, as used in this provision means--
 - (1) An institution of higher education that meets the requirements of 34 CFR 600.4(a), and has a student enrollment that consists of at least 20 percent:
 - (i) Hispanic Americans, i.e., students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or

- (ii) Native Americans, i.e., American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof.
 - (2) Institutions of higher learning determined to be Historically Black Colleges and universities by the Secretary of Education pursuant to 34 CFR 608.2; and
 - (3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d) or by a woman or women.
- (b) *Goals--*

The Contractor, in performance of this contract, agrees to provide its best efforts to awards subcontracts to the following classes of entities:

- (1) Small business concerns controlled by socially and economically disadvantaged individuals or by women: ***percent;
- (2) Historically Black Colleges and universities: ***percent;
- (3) Colleges or universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans: ***percent.

[***These goals are stated in a percentage reflecting the relationship of estimated award value of subcontracts to the value of this contract and appear elsewhere in this contract.]

(c) *Reporting requirements--*

- (1) The Contractor agrees to report, on an annual Federal Government fiscal year basis, its progress against the goals by providing the actual annual dollar value of subcontract payments for the preceding 12-month period, and the relationship of those payments to the incurred contract costs for the same period. Reports submitted pursuant to this clause must be received by the contracting officer (or designee) not later than 45 days after the end of the reporting period.
- (2) If the contract includes reporting requirements under FAR 52.219-9, Small, Small Disadvantaged and Women-Owned Subcontracting Plan, the Contractor's progress against the goals stated in paragraph (b) of this clause shall be included as an addendum to Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF295, Summary Subcontract Report, as applicable, for the period that corresponds to the end of the Federal Government fiscal year.

I-14. 952.227-82 RIGHTS TO PROPOSAL DATA (APR 1994)

Except for technical data contained on pages -- of the Contractor's proposal dated -- which are asserted by the Contractor as being proprietary data, it is agreed that, as a condition of the award of this contract, and notwithstanding the provisions of any notice appearing on the proposal, the Government shall have the right to use, duplicate, disclose and have others do so for any purpose whatsoever, the technical data contained in the proposal upon which this contract is based.

I-15. 952.235-70 KEY PERSONNEL (APR 1994)

The personnel specified in an attachment to this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified individuals to other programs, the Contractor shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed

substitutions) in sufficient detail to permit evaluation of the impact on the program. No diversion shall be made by the Contractor without the written consent of the Contracting Officer: Provided, that the Contracting Officer may ratify in writing such diversion and such ratification shall constitute the consent of the Contracting Officer required by this clause. The attachment to this contract may be amended from time to time during the course of the contract to either add or delete personnel, as appropriate.

I-16. 952.247-70 FOREIGN TRAVEL (FEB 1997)

- (a) Foreign travel, when charged directly, shall be subject to the prior approval of the contracting officer for each separate trip regardless of whether funds for such travel are contained in an approved budget. Foreign travel is defined as any travel outside of Canada, Mexico, and the United States and its territories and possessions.
- (b) Request for approval shall be submitted at least 45 days prior to the planned departure date, be on a Request for Approval of Foreign Travel form, and when applicable, include a notification of proposed Soviet-bloc travel.

I-17. 952.251-70 CONTRACTOR EMPLOYEE TRAVEL DISCOUNTS (MODIFIED)

Consistent with contract-authorized travel requirements, Contractor employees shall make use of the travel discounts offered to Federal travelers through use of contract airline fares, offered hotel and motel lodging rates, and negotiated car rental rates when use of such discounts would result in lower overall trip costs and the services are reasonably available to Contractor employees performing official Government contract business. Vendors providing these services may require that the Contractor employee traveling on Government business be furnished with a letter of identification signed by the authorized Contracting Officer.

- (a) *Contract Airlines.* Airlines participating in travel discounts are listed in commercial publications. Regulations governing the use of contract airlines are contained in the Federal Travel Regulation (FTR). Chapter 301-15 sets out the authorized methods of obtaining contract fares when such fares are available to cost-reimbursable Contractor employees.
- (b) *Hotels/motels.* Participating hotels and motels which extend discounts are listed in commercial publications, which show rates and facilities and identify by code those properties which offer reduced rates to cost-reimbursable Contractor employees while traveling on official contract business.
- (c) *Car Rentals.* The Military Traffic Management Command (MTMC) Department of Defense, negotiates rate agreements with car rental companies for special flat rates and unlimited mileage. Participating car rental companies which offer these terms to cost-reimbursable Contractor employees while traveling on official contract business are listed in the commercial publications.
- (d) *Procedures for Obtaining Service.* (1) Identification and method of payment requirements for participating Federal contract airlines are listed in the FTR. Available travel discount air fares may be ordered by an eligible Contractor or a Travel Management Center (TMC) provided the letter of identification signed by the cognizant Contracting Officer accompanies the order. In appropriate instances, such as geographical proximity, the eligible Contractors may obtain discount air fares through a DOE office or a cooperating local travel agency when a TMC is not available. Some airlines allow the purchase of discounted air fares with cash or credit card. (2) In the case of hotel and motel accommodations, reservations may be made by the Contractor employee directly with the hotel or motel but the employee must display, on arrival, the letter of identification and any other identification required by the hotel or motel proprietorship. (3) For car rentals, generally the same procedures as in (2) above will be followed in arranging reservations and obtaining discounts.
- (e) *Standard Letter of Identification.* Contractors shall prepare for the authorizing Contracting Officer a letter of identification based on the following format:

**FORMAT FOR GOVERNMENT CONTRACTORS TO QUALIFY FOR
TRAVEL DISCOUNTS (TO BE TYPED ON AGENCY OFFICIAL LETTERHEAD)**

To: *(Source of ticketing, accommodations or rental)*

Subject: Official Travel of Government Contractor

(Full name of traveler), bearer of this letter, is an employee of *(company name)* which is under contract to this agency under the Government contract *(contract number)*. During the period of the contract *(give dates)*, the employee is eligible and authorized to use available discount rates for contract-related travel in accordance with your contract and/or agreement with the Federal Government.

(Signature, title and telephone number of the Contracting Officer)

**I-18. 970.5204-2 INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK
PLANNING AND EXECUTION (JUN 1997)**

- (a) For the purposes of this clause,
 - (1) Safety encompasses environment, safety and health, including pollution prevention and waste minimization; and
 - (2) Employees include subcontractor employees.
- (b) In performing work under this contract, the Contractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Contractor shall exercise a degree of care commensurate with the work and the associated hazards. The Contractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the Contractor's work planning and execution processes. The Contractor shall, in the performance of work, ensure that:
 - (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Contractor and Subcontractor employees managing or supervising employees performing work.
 - (2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
 - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
 - (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
 - (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
 - (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
 - (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by DOE and the Contractor. These agreed-upon conditions and

requirements are requirements of the contract and binding upon the Contractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.

- (c) The Contractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the Contractor will:
 - (1) Define the scope of work;
 - (2) Identify and analyze hazards associated with the work;
 - (3) Develop and implement hazard controls;
 - (4) Perform work within controls; and
 - (5) Provide feedback on adequacy of controls and continue to improve safety management.
- (d) The System shall describe how the Contractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the Contractor will measure system effectiveness.
- (e) The Contractor shall submit to the Contracting Officer documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the Contracting Officer. Guidance on the preparation, content, review, and approval of the System will be provided by the Contracting Officer. On an annual basis, the Contractor shall review and update, for DOE approval, its safety performance objectives, performance measures, and commitments consistent with and in response to DOE's program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the Contractor's business processes for work planning, budgeting, authorization, execution, and change control.
- (f) The Contractor shall comply with, and assist the Department of Energy in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of this contract entitled "Laws, Regulations, and DOE Directives" in Section I. The Contractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this contract.
- (g) The Contractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Contractor fails to provide resolution or if, at any time, the Contractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the Contracting Officer may issue an order stopping work in whole or in part. Any stop work order issued by a Contracting Officer under this clause (or issued by the Contractor to a subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of the Government. In the event that the Contracting Officer issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the Contracting Officer. The Contractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- (h) The Contractor is responsible for compliance with the ES&H requirements applicable to this contract regardless of the performer of the work.

- (i) The Contractor shall include a clause substantially the same as this clause in subcontracts involving complex or hazardous work on site at a DOE-owned or -leased facility. Such subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the Contractor may require that the Subcontractor submit a Safety Management System for the Contractor's review and approval.

I-19. 970.5204-9 ACCOUNTS, RECORDS, AND INSPECTION (JUN 1996)

- (a) *Accounts.* The Contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting (1) all allowable costs incurred, (2) collections accruing to the Contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, and (3) the receipt, use, and disposition of all Government property coming into the possession of the Contractor under this contract. The system of accounts employed by the Contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.
- (b) *Inspection and Audit of Accounts and Records.* All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its authorized representative in accordance with the provisions of Clause I-54, Ownership of Records, at all reasonable times, before and during the period of retention provided for in (d) below, and the Contractor shall afford DOE proper facilities for such inspection and audit.
- (c) *Audit of Subcontractors' Records.* The Contractor also agrees, with respect to any subcontracts (including fixed-price or unit-price subcontracts or purchase orders) where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the Subcontractor of any tier, to either conduct an audit of the Subcontractor's costs or arrange for such an audit to be performed by the cognizant government audit agency through the Contracting Officer.
- (d) *Disposition of Record.* Except as agreed upon by the Government and the Contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the Contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the Contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the Contracting Officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause I-54, Ownership of Records, all other records in the possession of the Contractor relating to this contract shall be preserved by the Contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the Contractor.
- (e) *Reports.* The Contractor shall furnish such progress reports and schedules, financial and cost reports, and other reports concerning the work under this contract as the Contracting Officer may from time to time require.
- (f) *Inspections.* The DOE shall have the right to inspect the work and activities of the Contractor under this contract at such time and in such manner as it shall deem appropriate.
- (g) *Subcontracts.* The Contractor further agrees to require the inclusion of provisions similar to those in paragraphs (a) through (g) and paragraph (i) of this clause in all subcontracts (including fixed-price or unit-price subcontracts or purchase orders) of any tier entered into hereunder where, under the terms of the subcontract, costs incurred are a factor in determining the amount payable to the Subcontractor. The

Contractor further agrees to include an "Audit" clause, the substance of which is the "Audit" clause set forth at FAR 52.215-2, in each subcontract which does not include provisions similar to those in paragraph (a) through paragraph (g) and paragraph (i) of this clause, but which contains a "defective cost or pricing data" clause.

- (h) *Internal Audit.* The Contractor agrees to conduct an internal audit and examination satisfactory to DOE of the records, operations, expenses, and the transactions with respect to costs claimed to be allowable under this contract annually and at such other times as may be mutually agreed upon. The results of such audit, including the working papers, shall be submitted or made available to the Contracting Officer.
- (i) *Comptroller General.*
 - (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.
 - (2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
 - (3) Nothing in this contract shall be deemed to preclude an audit by the General Accounting Office of any transaction under this contract.

I-20. 970.5204-11 CHANGES (APR 1984)

- (a) *Changes and Adjustment of Fee.*

The Contracting Officer may at any time and without notice to the sureties, if any, issue written directions within the general scope of this contract requiring additional work or directing the omission of, or variation in, work covered by this contract. If any such direction results in a material change in the amount or character of the work described in the "Statement of Work," an equitable adjustment of the fee, if any, shall be made in accordance with the agreement of the parties and the contract shall be modified in writing accordingly. Any claim by the Contractor for an adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Contractor of the notification of change; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. A failure to agree on an equitable adjustment under this clause shall be deemed to be a dispute within the meaning of the clause entitled "Disputes."

- (b) *Work to Continue*

Nothing contained in this clause shall excuse the Contractor from proceeding with the prosecution of the work in accordance with the requirements of any direction hereunder.

I-21. 970.5204-12 Contractor'S ORGANIZATION (JUL 1994)

- (a) *Organization Chart.* As promptly as possible after the execution of this contract, the Contractor shall furnish to the Contracting Officer a chart showing the names, duties, and organization of key personnel to be employed in connection with the work, and shall furnish from time to time supplementary information reflecting changes therein.

(b) *Supervisory Representative of Contractor.*

Unless otherwise directed by the Contracting Officer, a competent full-time resident supervisory representative of the Contractor satisfactory to the Contracting Officer shall be in charge of the work at the site at all times. This also applies to off-site work.

- (c) The Contractor shall be responsible for maintaining satisfactory standards of employee competency, conduct, and integrity and shall be responsible for taking such disciplinary action with respect to its employees as may be necessary. The Contractor shall establish such standards and procedures as are necessary to implement effectively the provisions set forth in Appendix F, attached hereto and make a part hereof, and such standards and procedures shall be subject to the approval of the Contracting Officer.

I-22. 970.5204-13 ALLOWABLE COSTS AND FIXED-FEE (MANAGEMENT AND OPERATING CONTRACTS) (March 1998)

- (a) *Compensation for Contractor's Service.* Payment for the allowable costs as hereinafter defined, and of the fixed-fee, if any, as hereinafter provided, shall constitute full and complete compensation for the performance of the work under this contract.
- (b) *Fixed-Fee.* The fixed-fee payable to the Contractor for the performance of the work under this contract is \$2,145,644 for the period November 9, 1998 through March 3, 1999. There shall be no adjustment in the amount of the Contractor's fixed-fee by reason of differences between any estimate of cost for performance of the work under this contract and the actual costs for performance of that work.

NOTE: This provision to this paragraph may be appropriately changed to cover situations where the fee is for a period of time or different fees are allowed for various phases of the work.

- (c) *Allowable Costs.* The allowable cost of performing the work under this contract shall be the costs and expenses that are actually incurred by the Contractor in the performance of the contract work in accordance with its terms, that are necessary or incident thereto, and that are determined to be allowable as set forth in this paragraph. The determination of allowability of cost shall be based on:
- (1) Allowability and reasonableness in accordance with FAR 31.201-2(d) and 31.201-3;
 - (2) Standards promulgated by the Cost Accounting Standards Board, if applicable; otherwise, generally accepted accounting principles and practices appropriate to the particular circumstances; and
 - (3) Recognition of all exclusions and limitations set forth in this clause or elsewhere in this contract as to types or amounts of items of cost. Allowable costs shall not include the cost of any item described as unallowable in paragraph (e) of this clause except as indicated therein. Failure to mention an item of cost specifically in paragraphs (d) or (e) of this clause shall not imply either that it is allowable or that it is unallowable.
- (d) *Items of Allowable Cost.* Subject to the other provisions of this clause, the following items of cost of work done under this contract shall be allowable to the extent indicated:
- (1) Bonds and insurance, including self-insurance, as provided in the clause entitled, Insurance--Litigation and Claims.
 - (2) Communication costs, including telephone services, local and long-distance calls, telegrams, cablegrams, postage, and similar items.

- (3) Consulting services (including legal and accounting), and related expenses, as approved by the Contracting Officer, except as made unallowable by paragraphs (e)(16) and (e)(26).
- (4) Reasonable litigation and other legal expenses, including counsel fees, if incurred in accordance with the clause of the contract entitled, Insurance--Litigation and Claims, and the DOE approved Contractor litigation management procedures (including cost guidelines) as such procedures may be revised from time to time, and if not otherwise made unallowable in this contract.
- (5) Losses and expenses (including settlements made with the consent of the a Contracting Officer) sustained by the Contractor in the performance of this contract and certified in writing by the Contracting Officer to be reasonable, except the losses and expenses expressly made unallowable under other provisions of this contract.
- (6) Materials, supplies, and equipment, including freight transportation, material handling, inspection, storage, salvage, and other usual expenses incident to the procurement, use and disposition thereof, subject to approvals required under other provisions of this contract.
- (7) Patents, purchased design, and royalty payments to the extent expressly provided for under other provisions in this contract or as approved by the Contracting Officer, and preparation of invention disclosures, reports and related documents, and searching the art to the extent necessary to make such invention disclosures in accordance with any "Patent Rights" clause of this contract.
- (8) Personnel costs and related expenses incurred in accordance with the personnel appendix which is hereby incorporated by reference and made a part of this contract. It is specifically understood and agreed that said personnel appendix sets forth in detail personnel costs and related expenses to be allowable under this contract and is intended to document those personnel policies, practices and plans which have been found acceptable by the contracting officer. It is further understood and agreed that the Contractor will advise DOE of any proposed changes in any matters covered by said policies, practices or plans which relate to this item of cost, and that the personnel appendix may be modified from time to time in writing by mutual agreement of the Contractor and DOE without execution of an amendment to this contract for the purpose of effectuating any such changes in, or additions to, said personnel appendix as may be agreed upon by the parties. Such modifications shall be evidenced by execution of written numbered approval letters from the Contracting Officer or his representative. Types of personnel costs and related expenses to be incorporated into the personnel appendix, or amendments thereto, are as follows:
 - (i) Salaries and wages; bonuses and incentive compensation; overtime, shift differential, holiday, and other premium pay for time worked; non-work time, including vacations, holidays, sick, funeral, military, jury, witness, and voting leave; salaries and wages to employees in their capacity as union stewards and committeemen for time spent in handling grievances, or serving on labor management (Contractor) committees, provided, however, that the Contracting Officer's approval is required in each instance of total compensation to an individual employee at an annual rate of \$80,000.00 (see 970.3102-2) or more, when it is proposed that a total of 50 percent or more of such compensation be reimbursed under DOE cost-type contracts. Total compensation, as used here, includes only the employee's base salary, bonus, and incentive compensation payments;
 - (ii) Legally required contributions to old-age and survivors' insurance, unemployment compensation plans, and workers compensation plans, (whether or not covered by insurance); voluntary or agree-upon plans providing benefits for retirement, separation, life insurance, hospitalization, medical-surgical and unemployment (whether or not such plans are covered by insurance);

- (iii) Travel (except foreign travel, which requires specific approval by the contracting officer on a case-by-case basis); incidental subsistence and other allowances of Contractor employees, in connection with performance of work under this contract (including new employees reporting for work and transfer of employees, the transfer of their household goods and effects and the travel and subsistence of their dependents);
- (iv) Employee relations, welfare, morale, etc.; programs including incentive or suggestion awards; employee counseling services, health or first-aid clinics; house or employee publications;
- (v) Personnel training (except special education and training courses and research assignments calling for attendance at educational institutions which require specific approval by the Contracting Officer on a case-by-case basis); including apprenticeship training programs designed to improve efficiency and productivity of contract operations, to develop needed skills, and to develop scientific and technical personnel in specialized fields required in the contract work;
- (vi) Recruitment of personnel (including help-wanted advertisement), including service of employment agencies at rates not in excess of standard commercial rates, employment office, travel of prospective employees at the request of the Contractor for employment interviews; and
- (vii) Net cost of operating plant-site cafeteria, dining rooms, and canteens attributable to the performance of the contract.
- (viii) Personnel costs and related expenses incurred in accordance with established policies, programs, and schedules, and any changes thereto during the contract term, applicable to the Contractor's private operations and consistently followed throughout his organization, as approved by the Contracting Officer, such as, compensation of a senior executive, provided that such compensation does not exceed the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy. Costs of executive compensation shall be determined pursuant to Federal Acquisition Regulation 31.205-6(p).
- (9) Repairs, maintenance, inspection, replacement, and disposal of Government-owned property and the restoration or clean-up of site and facilities to the extent approved by the Contracting Officer and as allowable under paragraph (f) of the clause of this contract entitled, Property.
- (10) Subcontracts and purchase orders, including procurement from Contractor-controlled sources, subject to approvals required by other provisions of this contract.
- (11) Subscriptions to trade, business, technical, and professional periodicals, as approved by the Contracting Officer.
- (12) Taxes, fees, and charges levied by public agencies which the Contractor is required by law to pay, except those which are expressly made unallowable under other provisions of this contract.
- (13) Utility services, including electricity, gas, water, and sewerage.
- (14) Indemnification of the Pension Benefit Guaranty Corporation, pursuant to the Employee Retirement Income Security Act of 1974, in accordance with FAR 31.205-6(j)(3)(iv).

- (15) Establishment and maintenance of bank accounts in connection with the work hereunder, including, but not limited to, service charges, the cost of disbursing cash, necessary guards, cashiers, and paymasters. If payments are made by check, facilities and arrangements for cashing checks may be provided without expense to the employees, subject to the approval of the Contracting Officer.

NOTE: The following additional examples apply when the Contractor performs construction.

- (16) Camp operations, to the extent approved by the Contracting Officer.
 - (17) Maintenance, inspection, repair, replacement, and transportation of construction plant and equipment to the extent not covered by rentals or insurance and as provided in rental agreements approved by the Contracting Officer.
 - (18) Rental for (i) construction plant and equipment rented by the Contractor from others at rates and under written agreements approved by the Contracting Officer, and (ii) construction plant and equipment owned and furnished by the Contractor under this contract.
- (e) *Items of Unallowable Costs.* The following items of costs are unallowable under this contract to the extent indicated:
- (1) Advertising and public relations costs designed to promote the Contractor or its products, including the costs of promotional items and memorabilia such as models, gifts and souvenirs, and the cost of memberships in civic and community organizations; except those advertising and public relations costs
 - (i) Specifically required by the contract,
 - (ii) Approved in advance by the Contracting Officer as clearly in furtherance of work performed under the contract,
 - (iii) That arise from requirements of the contract and that are exclusively for recruiting personnel, acquiring scarce items for contract performance, disposing of scrap or surplus materials, the transfer of a federally owned or originated technology to State and local governments and to the private sector, or acquisition of contract-required supplies and services, or
 - (iv) Where the primary purpose of the activity is to facilitate contract performance in support of the DOE mission.
 - (2) Bad debts (including expenses of collection) and provisions for bad debts arising out of other business of the Contractor.
 - (3) Proposal expenses and costs of proposals.
 - (4) Bonuses and similar compensation under any other name, which (i) are not pursuant to an agreement between the Contractor and employee prior to the rendering of the services or an established plan consistently followed by the contract or (ii) are in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder, or (iii) provide total compensation to an employee in excess of reasonable compensation for the services rendered.
 - (5) Central and branch office expenses of the Contractor, except as specifically set forth in the contract.

- (6) Commissions, bonuses, and fees (under whatever name) in connection with obtaining or negotiating for a Government contract or a modification thereto, except when paid to bona fide employees or bona fide established selling organizations maintained by the Contractor for the purpose of obtaining Government business.
- (7) Contingency reserves, provisions for.
- (8) Contributions and donations, including cash, Contractor-owned property and services, regardless of the recipient.
- (9) Depreciation in excess of that calculated by application of methods approved for use by the Internal Revenue Code of 1954, as amended, including the straight-line declining balance (using a rate not exceeding twice the rate which would have been used had the depreciation been computed under the straight line method), or sum-of-the-years digits method, on the basis of expected useful life, to the cost of acquisition of the related fixed assets less estimated salvage or residual value at the end of the expected useful life.
- (10) Dividend provisions or payments and, in the case of sole proprietors and partners, distributions of profit.
- (11) Entertainment, including costs of amusement, diversion, social activities; and directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities; costs of membership in any social, dining or country club or organization, except the costs of such recreational activities for on-site employees as may be approved by the Contracting Officer or provided for elsewhere in the contract.
- (12) Fines and penalties, except, with respect to civil fines and penalties only, if the Contractor demonstrates to the Contracting Officer that--
 - (i) Such a civil fine or penalty was incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer; or
 - (ii) Such a civil fine or penalty was imposed without regard to fault and could not have been avoided by the exercise of due care.
- (13) Government-furnished property, except to the extent that cash payment therefor is required pursuant to procedures of DOE applicable to transfers of such property to the Contractor from others.
- (14) Insurance (including any provisions of a self-insurance reserve) on any person where the contractor under the insurance policy is the beneficiary, directly or indirectly, and insurance against loss of or damage to Government property as defined elsewhere in this contract.
- (15) Interest, however represented (except (i) Interest incurred in compliance with the contract clause entitled "State and local Taxes" or, (ii) imputed interest costs relating to leases classified and accounted for as capital leases under generally accepted accounting principles (GAAP), provided that the decision to enter into a capital leasing arrangement has been specifically authorized and approved by the DOE in accordance with applicable procedures and such interest costs are recorded in an appropriately specified DOE account established for such purpose), bond discounts and expenses, and costs of financing and refinancing operations.
- (16) Legal, accounting, and consulting services and related costs incurred in connection with the preparation and issuance of stock, rights, organization or reorganization, prosecution or defense of antitrust suits, prosecution of claims against the United States, contesting actions of proposed

actions of the United States, and prosecution or defense of patent infringement litigation (except where incurred pursuant to the Contractor's performance of the Government-funded technology transfer mission and in accordance with the Litigation and Claims article).

(17) Losses or expenses:

- (i) On, or arising from the sale, exchange, or abandonment of capital assets, including investments;
- (ii) On other contracts, including the Contractor's contributed portion under cost-sharing contracts;
- (iii) In connection with price reductions to and discount purchases by employees and others from any source;
- (iv) That are compensated for by insurance or otherwise or which would have been compensated for by insurance required by law or by written direction of the contracting officer but which the Contractor failed to procure or maintain through its own fault or negligence;
- (v) That result from willful misconduct or lack of good faith on the part of any of the contractor's managerial personnel (as that term is defined in the clause of this contract entitled, Property);
- (vi) That represent liabilities to third persons that are not allowable under the clause of this contract entitled, Insurance-- Litigation and Claims; or
- (vii) That represent liabilities to third persons for which the Contractor has expressly accepted responsibility under other terms of this contract.

(18) (OMITTED)

(19) Membership in trade, business, and professional organizations, except as approved by the contracting officer.

(20) Precontract costs, except as expressly made allowable under other provisions in this contract.

(21) Research and development costs, unless specifically provided for elsewhere in this contract.

(22) Selling cost, except to the extent they are determined to be reasonable and to be allocable to the contract. Allocability of selling costs to the contract will be determined in the light of reasonable benefit to the agency program arising from such activities as technical, consulting, demonstration, and other services performed for such purposes as applying or adapting the Contractor's product for agency use.

(23) Storage of records pertaining to this contract after completion of operations under this contract, irrespective of contractual or statutory requirement for the preservation of records.

(24) Taxes, fees, and charges in connection with financing, refinancing, or refunding operations, including listing of securities on exchanges, taxes which are paid contrary to the clause entitled "State and local taxes," federal taxes on net income and excess profits, special assessments on land which represent capital improvement and taxes on accumulated funding deficiencies of, or prohibited transactions involving, employee deferred compensation plans pursuant to section 4971 or section 4975 of the Internal Revenue Code of 1954, as amended, respectively.

- (25) Travel expenses of the officers, proprietors, executives, administrative heads and other employees of the Contractor's central office or branch office organizations concerned with the general management, supervision, and conduct of the Contractor's business as a whole, except to the extent that particular travel is in connection with the contract and approved by the Contracting Officer.
- (26) Salary or other compensation (and expenses related thereto) of any individual employed under this contract as a consultant or in another comparable employment capacity who is an employee of another organization and concurrently performing work on a full-time annual basis for that organization under a cost-type contract with DOE, except to the extent that cash payment therefor is required pursuant to the provisions of this contract or procedure of DOE applicable to the borrowing of such an individual from another cost-type Contractor.
- (27) Travel by commercial aircraft or travel by other than common carrier that is not necessary for the performance of this contract or the cost of which exceeds the lesser of the lowest available commercial discount airfare, Government contract airfare, or customary standard (coach or equivalent) commercial airfare. Airfare costs in excess of the lowest such airfare are unallowable, except when such accommodations: Require circuitous routing; require travel during unreasonable hours; excessively prolong travel; result in increased cost that would offset transportation savings; would offer accommodations not reasonably adequate for the physical or medical needs of the traveler; or are not reasonably available to meet necessary mission requirements. Individual Contractor determinations of non-availability of commercial discount airfare or Government contract airfare will not be contested by DOE when the Contractor can reasonably demonstrate such non-availability or, on an overall basis, that established policies and procedures result in the routine use of the lowest available airfare. However, in order for air travel costs in excess of customary standard airfare to be allowable, the contractor must justify and document the applicable condition(s) set forth above.
- (28) Special construction industry "funds" financed by employer contributions for such purposes as methods and materials research, public and industry relations, market development, and disaster relief, except as specifically provided elsewhere in this contract.
- (29) Late premium payment charges related to employee deferred compensation plan insurance.
- (30) Facilities capital cost of money. (CAS 414 and CAS 417).
- (31) Contractor costs incurred to influence either directly or indirectly--
 - (i) Legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State; or
 - (ii) Federal, State, or executive body of a political subdivision of a State action on regulatory and contract matters as described in the "Political Activity Cost Prohibition" clause of this contract.
- (32) Commercial automobile rental expenses unless approved by the Contracting Officer.
- (33) Costs incurred in connection with any criminal, civil or administrative proceeding commenced by the Federal Government or a State, local or foreign government, as provided in the clause titled "Cost prohibitions related to legal and other proceedings" incorporated elsewhere in this contract.
- (34) Costs of alcoholic beverages.
- (35) Contractor employee travel costs incurred for lodging, meals and incidental expenses which exceed on a daily basis the applicable maximum per diem rates in effect for Federal civilian employees at

the time of travel. When the applicable maximum per diem rate is inadequate due to special or unusual situations, the Contractor may pay employees for actual expenses in excess of such per diem rate limitation. To be allowable, however, such payments must be properly authorized by an officer or appropriate official of the Contractor and shall not exceed the higher amounts that may be authorized for Federal civilian employees in a similar situation.

I-23. 970.5204-15 OBLIGATION OF FUNDS (APR 1994)

- (a) *Obligation of Funds.* The amount presently obligated by the Government with respect to this contract is _____ dollars (\$_____). Such amount may be increased unilaterally by DOE by written notice to the Contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the Contractor, shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, Regulations, and DOE Directives clause of this contract. Nothing in this paragraph (a) is to be construed as authorizing the Contractor to exceed limitations stated in financial plans established by DOE and furnished to the Contractor from time to time under this contract.
- (b) *Limitation on Payment by the Government.* Except as otherwise provided in this contract and except for costs which may be incurred by the Contractor pursuant to the clause entitled "Termination," or costs of claims allowable under the contract occurring after completion or termination and not released by the Contractor at the time of financial settlement of the contract in accordance with the clause entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the Contractor's fee. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of (1) collections accruing to the Contractor in connection with the work under this contract and processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, Regulations, and DOE Directives clause of this contract, and (2) other funds which DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.
- (c) *Notices-Contractor Excused from Further Performance.* The Contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) above), plus the Contractor's best estimate of collections to be received and available during the period hereinafter specified, is in the Contractor's best judgment sufficient to continue contract operations at the programmed rate for only 60 days and to cover the Contractor's unpaid fee, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) above), less the amount of the Contractor's fee then earned but not paid, is in the Contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the Contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the Contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the clause entitled "Termination."
- (d) *Financial Plans; Cost and Commitment Limitations.* In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the Contractor, establish controls on the costs to be incurred and encumbrances to be made in the performance of the contract work. Such plans and directives may be amended or supplemented from time to time by DOE. The Contractor hereby agrees (1) to comply with the specific

limitations (ceilings) on costs and encumbrances set forth in such plans and directives, (2) to comply with other requirements of such plans and directives, and (3) to notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.

- (e) *Government's Right to Terminate not Affected.* The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the clause entitled "Termination."

I-24. 970.5204-16 PAYMENTS AND ADVANCES (JUN 1997)

- (a) *Installments of Fixed-Fee.* The fixed-fee payable under this contract shall become due and payable in periodic installments in accordance with a schedule determined by the Contracting Officer. Fixed-fee payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the contracting officer. The Contracting Officer may offset against any such fee payment, the amounts owed to the Government by the Contractor, including any amounts owed for disallowed costs under this contract. No fixed-fee payment may be withdrawn against the payments cleared financing arrangement without prior written approval of the Contracting Officer.
- (b) *Payment of Base Fee and Award Fee.* The base fee, if any, is payable in equal monthly installments. Award fee pool amounts earned are payable following the issuance by the FDO of a Determination of Award Fee Pool Amount Earned, in accordance with the clause of this contract entitled, Award Fee: Base Fee and Award Fee. Base fee and award fee pool amounts earned payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the Contracting Officer. The Contracting Officer may offset against any such fee payment, the amounts owed to the Government by the Contractor, including any amounts owed for disallowed costs under this contract. No base fee or award fee pool amount earned payment may be withdrawn against the payments cleared financing arrangement without prior written approval of the Contracting Officer.
- (c) *Payments on Account of Allowable Costs.* The Contracting Officer and the Contractor shall agree as to the extent to which payment for allowable costs or payments for other items specifically approved in writing by the Contracting Officer shall be made from advances of Government funds. When pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from costs for payment purposes until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accrual therefor may be included in costs for payment purposes, provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from cost for payment purposes until payment has been made.
- (d) *Special Financial Institution Account--Use.* All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the Contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Section J, Attachment 3. No part of the funds in the special financial institution account shall be (1) commingled with any funds of the Contractor or (2) used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract or payments for other items specifically approved in writing by the Contracting Officer. If the Contracting Officer determines that the balance of such special financial institution account exceeds the Contractor's current needs, the Contractor shall promptly make such disposition of the excess as the Contracting Officer may direct.
- (e) *Title to Funds Advanced.* Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an

advance to the Contractor hereunder is not a loan to the Contractor, and will not require the payment of interest by the Contractor, and that the Contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

- (f) *Review and Approval of Costs Incurred.* The Contractor shall prepare and submit annually as of September 30, a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the Cost Statement. The Contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (h) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended. DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the Contractor in accordance with DOE accounting policies, but will not relieve the Contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.
- (g) *Financial Settlement.* The Government shall promptly pay to the Contractor the unpaid balance of allowable costs and fee upon termination of the work, expiration of the term of the contract, or completion of the work and its acceptance by the Government after (1) compliance by the contractor with DOE's patent clearance requirements, and (2) the furnishing by the contractor of:
 - (1) An assignment of the Contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the Contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;
 - (2) A closing financial statement;
 - (3) The accounting for Government-owned property required by the clause entitled "Property;" and
 - (4) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:
 - (i) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the Contractor;
 - (ii) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the Contractor on the date of the execution of the release; and provided further that the Contractor gives notice of such claims in writing to the Contracting Officer promptly, but not more than one (1) year after the Contractor's right of action first accrues. In addition, the Contractor shall provide prompt notice to the Contracting Officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause I-33, DEAR 970.5204-31, "Litigation and Claims"); and
 - (iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents; and
 - (iv) Claims recognizable under the clause entitled, Nuclear Hazards indemnity Agreement. In arriving at the amount due the Contractor under this clause, there shall be deducted, (1) any claim which the Government may have against the Contractor in connection with this contract, and (2) deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the special

financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.

- (h) *Claims.* Claims for credit against funds advanced for payment shall be accompanied by such supporting documents and justification as the Contracting Officer shall prescribe.
- (i) *Discounts.* The Contractor shall take and afford the Government the advantage of all known and available cash and trade discounts, rebates, allowances, credits, salvage, and commissions unless the Contracting Officer finds that action is not in the best interest of the Government.
- (j) *Collections.* All collections accruing to the Contractor in connection with the work under this contract, except for the Contractor's fee and royalties or other income accruing to the Contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the Contracting Officer pursuant to the Laws, Regulations, and DOE Directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the Contracting Officer.
- (k) *Direct Payment of Charges.* The Government reserves the right, upon ten days written notice from the Contracting Officer to the Contractor, to pay directly to the persons concerned, all amounts due which otherwise would be allowable under this contract. Any payment so made shall discharge the Government of all liability to the Contractor therefor.

I-25. 970.5204-17 POLITICAL ACTIVITY COST PROHIBITION (DEC 1997)

- (a) Pursuant to the allowable cost provisions established elsewhere under the contract, costs associated with the following activities are not reimbursable under the contract:
 - (1) Attempts to influence the outcome of any Federal, State, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activities;
 - (2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;
 - (3) Any attempt to influence (i) the introduction of Federal or State legislation, or (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;
 - (4) Any attempt to influence (i) the introduction of Federal or State legislation, or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or
 - (5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable activities.

- (6) Contractor costs incurred to influence (directly or indirectly) Federal, State, or local executive branch action on regulatory and contract matters.
- (b) Costs of the following activities are excepted from the coverage of paragraph (a) of this clause; provided that the resultant contract costs are reasonable and otherwise comply with the allowable cost provisions of the contract:
 - (1) Providing Members of Congress, their staff members or staff of cognizant legislative committees, in response to a request (written or oral, prior or contemporaneous) from Members of Congress, their staff members or staff of cognizant legislative committees, or as otherwise directed by the Contracting Officer, information or expert advice of a factual, technical, or scientific nature, with respect to topics directly related to the performance of the contract or proposed legislation. In providing this information or expert advice, the contractor shall indicate to the recipient that it is not presenting the views of DOE. Reasonable costs for transportation, lodging, or meals incurred by Contractor employees for the purpose of providing such information or expert advice shall also be reimbursable; provided the request for such information or expert advice is a prior written request signed by a Member of Congress, and provided such costs also comply with the allowable cost provisions of the contract.
 - (2) Providing State legislatures or subdivisions thereof, their staff members, or staff of cognizant legislative committees, in response to a prior written request from a State legislator, or as otherwise directed by the Contracting Officer, information or expert advice of factual, technical, or scientific nature, with respect to topics directly related to the performance of the contract or proposed legislation. In providing this information or expert advice, the Contractor shall indicate to the recipient that it is not presenting the views of DOE. Reasonable costs for transportation, lodging, or meals incurred by Contractor employees shall be reimbursable, provided such costs also comply with the allowable costs provision of this contract.
 - (3) Any lobbying made unallowable under subparagraph (a)(3) of this clause to influence State legislation in order to reduce contract cost, or to avoid material impairment of the Contractor's authority to perform the contract if authorized by the Contracting Officer.
 - (4) Any activity specifically authorized by statute to be undertaken with funds from the contract.
- (c) Unallowable lobbying costs incurred, if any, shall not be charged to DOE, paid for with DOE funds or recorded as allowable cost in DOE's system of accounts.
- (d) The Contractor's annual certification submitted as part of its annual claim (i.e., Voucher Accounting for Net Expenditures Accrued required under the clause titled "Payments and Advances") or cost incurred statement, that the costs claimed are allowable under the contract, shall also serve as the Contractor's certification that the requirements and standards of this clause have been complied with.
- (e) The Contractor shall maintain adequate records to demonstrate that the annual certifications of claimed costs as being allowable comply with the requirements of this clause.
- (f) Time logs, calendars, or similar records shall not be created for purposes of complying with this clause during any particular calendar month when (1) An employee engages in legislative liaison activities (as delineated in paragraphs (a) and (b) of this clause) 25 percent or less of the employee's compensated hours of employment during that calendar month, and (2) within the preceding five-year period, the Contractor has not materially misstated allowable or unallowable costs of any nature, including legislative liaison costs. When conditions (f)(1) and (2) of this clause are met, the Contractor is not required to establish records to support the allowability of claimed costs in addition to records already required or

maintained. Also, when conditions (f)(1) and (2) of this clause are met the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of legislative liaison activity time spent by employees during any calendar month.

- (g) During contract performance, the Contractor should resolve, in advance, any significant questions or disagreements between the Contractor and DOE concerning compliance with this clause.
- (h) In providing information or expert advice under paragraph (b)(1) and (b)(2) of this clause, the Contractor shall advise the Contracting Officer in advance or as soon as practicable.

I-26. 970.5204-19 PRINTING (APR 1984)

- (a) To the extent that duplicating or printing services may be required in the performance of this contract, the Contractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.
- (b) The term "Printing" includes the following processes: composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this contract involving the duplication of less than 5,000 copies of a single page, or no more than 25,000 units in the aggregate of multiple pages, will not be deemed to be printing.
- (c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.
- (d) In all subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations), the Contractor shall include a provision substantially the same as this clause.

I-27. 970.5204-20 MANAGEMENT CONTROLS (AUG 1993)

- (a) The Contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted by management to reasonably ensure that: The mission and functions assigned to the Contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the Contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely. The systems of controls employed by the Contractor shall be documented and satisfactory to DOE. Such systems shall be an integral part of the Contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility. The Contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively.
- (b) The Contractor shall be responsible for maintaining, as a part of its operational responsibilities, a baseline quality assurance program that implements documented performance, quality standards, and control and assessment techniques.

I-28. 970.5204-21 PROPERTY (JUN 1997)

- (a) *Furnishing of Government Property.* The Government reserves the right to furnish any property or services required for the performance of the work under this contract.
- (b) *Title to Property.* Except as otherwise provided by the Contracting Officer, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Contractor, for the cost of which The Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass directly from the vendor to the Government. The Government reserves the right to inspect, and to accept or reject, any item of such property. The Contractor shall make such disposition of rejected items as the Contracting Officer shall direct. Title to other property, the cost of which is reimbursable to The Contractor under this contract, shall pass to and vest in the Government upon
 - (1) issuance for use of such property in the performance of this contract, or
 - (2) commencement of processing or use of such property in the performance of this contract, or
 - (3) reimbursement of the cost thereof by the Government, whichever first occurs. Property furnished by the Government and property purchased or furnished by The Contractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.
- (c) *Identification.* To the extent directed by the contracting officer, The Contractor shall identify Government property coming into the Contractor's possession or custody, by marking and segregating in such a way, satisfactory to the Contracting Officer, as shall indicate its ownership by the Government.
- (d) *Disposition.* The Contractor shall make such disposition of Government property which has come into the possession or custody of the Contractor under this contract as the Contracting Officer may direct during the progress of the work or upon completion or termination of this contract. The Contractor may, upon such terms and conditions as the Contracting Officer may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Contracting Officer and the Contractor or as the fair value thereof. The amount received by the Contractor as the result of any disposition, or the agreed fair value of any such property acquired by the Contractor, shall be applied in reduction of costs allowable under this contract or shall be otherwise credited to account to the Government, as the Contracting Officer may direct. Upon completion of the work or the termination of this contract, the Contractor shall render an accounting, as prescribed by the contracting officer, of all government property which had come into the possession or custody of the Contractor under this contract.
- (e) *Protection of Government Property)Management of High-Risk Property and Classified Materials.*
 - (1) The Contractor shall take all reasonable precautions, and such other actions as may be directed by the contracting officer, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect government property in the Contractor's possession or custody.
 - (2) In addition, the Contractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management regulations (41 CFR chapter 101), the Department of Energy Property Management regulations (41 CFR chapter 109), and other applicable regulations.

- (3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.
- (f) *Risk of Loss of Government Property.*
- (1) (i) The Contractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:
 - (A) Willful misconduct or lack of good faith on the part of the Contractor's managerial personnel;
 - (B) Failure of the Contractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer to safeguard such property under paragraph (e) of this clause; or
 - (C) Failure of Contractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i)(1) of this clause.
 - (ii) If, after an initial review of the facts, the contracting officer informs the Contractor that there is reason to believe that the loss, destruction of, or damage to the government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Contractor to show that the Contractor should not be required to compensate the government for the loss, destruction, or damage.
 - (2) In the event that the Contractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of this clause, the Contractor's compensation to the Government shall be determined as follows:
 - (i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.
 - (ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Contracting Officer shall determine the value of such property, consistent with all relevant facts and circumstances.
 - (3) The portion of the cost of insurance obtained by the Contractor that is allocable to coverage of risks of loss referred to in paragraph (f)(1) of this clause is not allowable.
- (g) *Steps to be taken in event of loss.* In the event of any damage, destruction, or loss to Government property in the possession or custody of the Contractor with a value above the threshold set out in the Contractor's approved property management system, the Contractor:
- (1) Shall immediately inform the Contracting Officer of the occasion and extent thereof,

- (2) Shall take all reasonable steps to protect the property remaining, and
 - (3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the contracting officer. The Contractor shall take no action prejudicial to the right of the Government to recover therefore, and shall furnish to the Government, on request, all reasonable assistance in obtaining recovery.
- (h) *Government Property for Government use only.* Government property shall be used only for the performance of this contract.
- (i) *Property Management.*
- (1) *Property Management System.*
 - (i) The Contractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the contract. The Contractor's property management system shall be submitted to the Contracting Officer for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management regulations and Department of Energy Property Management regulations, and such directives or instructions which the Contracting Officer may from time to time prescribe.
 - (ii) In order for a property management system to be approved, it must provide for:
 - (A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;
 - (B) Employee personal responsibility and accountability for Government-owned property;
 - (C) Full integration with the Contractor's other administrative and financial systems; and
 - (D) A method for continuously improving property management practices through the identification of best practices established by best in class" performers.
 - (iii) Approval of the Contractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i)(2) of this clause.
 - (2) *Property Inventory.*
 - (i) Unless otherwise directed by the contracting officer, the Contractor shall within six months after execution of the contract provide a baseline inventory covering all items of Government property.
 - (ii) If the Contractor is succeeding another Contractor in the performance of this contract, the contractor shall conduct a joint reconciliation of the property inventory with the predecessor Contractor. The Contractor agrees to participate in a joint reconciliation of the property inventory at the completion of this contract. This information will be used to provide a baseline for the succeeding contract as well as information for closeout of the predecessor contract.
- (j) The term "*Contractor's Managerial Personnel*" as used in this clause means, the Contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:

- (1) All or substantially all of the Contractor's business; or
- (2) All or substantially all of the Contractor's operations at any one facility or separate location to which this contract is being performed; or
- (3) A separate and complete major industrial operation in connection with the performance of this contract; or
- (4) A separate and complete major construction, alteration, or repair operation in connection with performance of this contract; or
- (5) A separate and discrete major task or operation in connection with the performance of this contract.

Note: Substitute the following paragraph (j) for nonprofit Contractors:

- (j) The term *Contractor's Managerial Personnel* as used in this clause means, the Contractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of:
 - (1) The Contractor's business; or
 - (2) The Contractor's operations at any one facility or separate location at which this contract is being performed; or
 - (3) The Contractor's Government property system and/or a Major System Acquisition or Major Project as defined in DOE Order 4700.1 (Version in effect on effective date of contract).
- (k) The Contractor shall include this clause in cost reimbursable contracts.

I-29. 970.5204-22 CONTRACTOR PURCHASING SYSTEM (NOV1997)

- (a) *General.* The Contractor shall develop, implement, and maintain formal policies, practices, and procedures to be used in the award of subcontracts consistent with this clause, 48 CFR (DEAR) 970.5204-44, and 48 CFR (DEAR) 970.71. The Contractor's purchasing system and methods shall be fully documented, consistently applied, and acceptable to DOE in accordance with 48 CFR (DEAR) 970.7102. The Contractor shall maintain file documentation which is appropriate to the value of the purchase and is adequate to establish the propriety of the transaction and the price paid. The Contractor's purchasing performance will be evaluated against such performance criteria and measures as may be set forth elsewhere in this contract. DOE reserves the right at any time to require that the Contractor submit for approval any or all purchases under this contract. The Contractor shall not purchase any item or service the purchase of which is expressly prohibited by the written direction of DOE and shall use such special and directed sources as may be expressly required by the DOE Contracting Officer. The Contractor shall manage a Self-Assessment Program and shall submit to the Contracting Officer a copy of Self-Assessment reports in accordance with written direction and guidance provided by the Contracting Officer. DOE reserves the right to review and approve the Contractor's purchasing system in accordance with 48 CFR subpart 44.3, and DOE implementing policy and guidance. The Contractor's approved purchasing system and methods shall include the requirements set forth in paragraphs (b) through (w) of this clause.
- (b) *Acquisition of Utility Services.* Utility services shall be acquired in accordance with the requirements of 48 CFR 970.41.
- (c) *Acquisition of Real Property.* Real property shall be acquired in accordance with 48 CFR (DEAR) Subpart 917.74.

- (d) *Advance Notice of Proposed Subcontract Awards.* Advance notice shall be provided in accordance with 48 CFR (DEAR) 970.7109.
- (e) *Audit of Subcontractors.*
 - (1) The Contractor shall provide for:
 - (i) periodic post-award audit of cost-reimbursement Subcontractors at all tiers, and
 - (ii) audits, where necessary, to provide a valid basis for pre-award or cost or price analysis.
 - (2) Responsibility for determining the costs allowable under each cost-reimbursement subcontract remains with the Contractor or next higher-tier Subcontractor. The Contractor shall provide, in appropriate cases, for the timely involvement of the Contractor and the DOE Contracting Officer in resolution of subcontract cost allowability.
 - (3) Where audits of subcontractors at any tier are required, arrangements may be made to have the cognizant Federal agency perform the audit of the subcontract. These arrangements shall be made administratively between DOE and the other agency involved and shall provide for the cognizant agency to audit in an appropriate manner in light of the magnitude and nature of the subcontract. In no case, however, shall these arrangements preclude determination by the DOE Contracting Officer of the allowability or unallowability of Subcontractor costs claimed for reimbursement by the Contractor.
 - (4) Allowable costs for cost reimbursable subcontracts are to be determined in accordance with the cost principles of FAR Part 31, appropriate for the type of organization to which the subcontract is to be awarded, as supplemented by 48 CFR (DEAR) Part 931. Allowable costs in the purchase or transfer from Contractor-affiliated sources shall be determined in accordance with 48 CFR (DEAR) 970.7105 and 48 CFR (DEAR) 970.3102-15(b).
- (f) *Bonds and Insurance.*
 - (1) The Contractor shall require performance bonds in penal amounts as set forth in FAR 28.102-2(a) for all fixed priced and unit-priced construction subcontracts in excess of \$25,000. The Contractor shall consider the use of performance bonds in fixed price nonconstruction subcontracts, where appropriate.
 - (2) A payment bond shall be obtained on Standard Form 25A, modified to name the Contractor as well as the United States of America as obligees, for all fixed price, unit-price and be determined as set forth in FAR 28.102-2(b).
 - (3) A subcontractor may have more than one acceptable surety in both construction and other subcontracts, provided that in no case will the liability of any one surety exceed the maximum penal sum for which it is qualified for any one obligation. For subcontracts other than construction, a co-surety (two or more sureties together) may reinsure amounts in excess of their individual capacity, with each surety having the required underwriting capacity that appears on the list of acceptable corporate sureties.
- (g) *Buy American.*

The Contractor shall comply with the provisions of the Buy American Act as reflected in 48 CFR (DEAR) 970.5203-3 and 48 CFR (DEAR) 970.5204-3. The Contractor shall forward determinations of nonavailability of individual items to the DOE Contracting Officer or approval.

Items in excess of \$100,000 require the prior concurrence of the Head of Contracting Activity. If, however, the contractor has an approved purchasing system, the Head of the Contracting Activity may authorize the Contractor to make determinations of nonavailability for individual items valued at \$100,000 or less.

(h) Construction and Architect-Engineer Subcontracts.

(1) Independent Estimates. A detailed, independent estimate of costs shall be prepared for all construction work to be subcontracted.

(2) Specifications. Specifications for construction shall be prepared in accordance with the DOE publication entitled "General Design Criteria Manual."

(3) Prevention of Conflict of Interest.

(i) The Contractor shall not award a subcontract for construction to the architect-engineer firm or an affiliate that prepared the design. This prohibition does not preclude the award of a turn key subcontract so long as the subcontractor assumes all liability for defects in design and construction and consequential damages.

(ii) The Contractor shall not award both a cost-reimbursement subcontract and a fixed-price subcontract for construction or architect-engineer services or any combination thereof to the same firm where those subcontracts will be performed at the same site.

(iii) The Contractor shall not employ the construction subcontractor or an affiliate to inspect the firm's work. The Contractor shall assure that the working relationships of the construction subcontractor and the subcontractor inspecting its work and the authority of the inspector are clearly defined.

(i) Contractor-Affiliated Sources. Equipment, materials, supplies, or services from a Contractor-affiliated source shall be purchased or transferred in accordance with 48 CFR (DEAR) 970.7105.

(j) Contractor-Subcontractor Relationship. The obligations of the Contractor under paragraph (a) of this clause, including the development of the purchasing system and methods, and purchases made pursuant thereto, shall not relieve the Contractor of any obligation under this contract (including, among other things, the obligation to properly supervise, administer, and coordinate the work of subcontractors). Subcontracts shall be in the name of the Contractor, and shall not bind or purport to bind the Government.

(k) Government Property. Identification, inspection, maintenance, protection, and disposition of Government property shall conform with the policies and principles of FAR Part 45, 48 CFR (DEAR) 945, the Federal Property Management Regulations 41 CFR 101, the DOE Property Management Regulations 41 CFR 109, and their contracts.

(l) Indemnification. Except for Price-Anderson Nuclear Hazards Indemnity, no subcontractor may be indemnified except with the prior approval of the Procurement Executive.

(m) Leasing of Motor Vehicles. Contractors shall comply with FAR 8.11 and 48 CFR (DEAR) 908.11.

(n) Make-or-Buy Plans. Acquisition of property and services shall be obtained on a least-cost basis, consistent with the requirements of the Make-or-Buy Plan clause of this contract and the Contractor's approved make-or-buy plan.

- (o) *Management, Acquisition and Use of Information Resources.* Requirements for automatic data processing resources and telecommunications facilities, services, and equipment, shall be reviewed and approved in accordance with applicable DOE Orders and regulations regarding information resources.
- (p) *Priorities, Allocations and Allotments.* Priorities, allocations and allotments shall be extended to appropriate subcontracts in accordance with the clause or clauses of this contract dealing with priorities and allocations.
- (q) *Purchase of Special Items.* Purchase of the following items shall be in accordance with the following provisions of 48 CFR (DEAR) 908.71 and the Federal Property Management Regulations, 41 CFR 101:
 - (1) Motor vehicles--48 CFR 908.7101
 - (2) Aircraft--48 CFR 908.7102
 - (3) Security Cabinets--48 CFR 908.7106
 - (4) Alcohol--48 CFR 908.7107
 - (5) Helium--48 CFR 908.7108
 - (6) Fuels and packaged petroleum products--48 CFR 908.7109
 - (7) Coal--48 CFR 908.7110
 - (8) Arms and Ammunition--48 CFR 908.7111
 - (9) Heavy Water--48 CFR 908.7121(a)
 - (10) Precious Metals--48 CFR 908.7121(b)
 - (11) Lithium--48 CFR 908.7121(c)
 - (12) Products and services of the blind and severely handicapped--41 CFR 101-26.701
 - (13) Products made in Federal penal and correctional institutions--41 CFR 101-26.702
- (r) *Purchase vs. Lease Determinations.* Contractors shall determine whether required equipment and property should be purchased or leased, and establish appropriate thresholds for application of lease vs. purchase determinations. Such determinations shall be made:
 - (1) at time of original acquisition;
 - (2) when lease renewals are being considered; and
 - (3) at other times as circumstances warrant.
- (s) *Quality Assurance.* Contractors shall provide no less protection for the Government in its subcontracts than is provided in the prime contract.
- (t) *Setoff of Assigned Subcontractor Proceeds.* Where a Subcontractor has been permitted to assign payments to a financial institution, the assignment shall treat any right of set off in accordance with 48 CFR (DEAR) 932.803.
- (u) *Strategic and Critical Materials.* The Contractor may use strategic and critical materials in the National Defense Stockpile.
- (v) *Termination.* When subcontracts are terminated as a result of the termination of all or a portion of this contract, the Contractor shall settle with subcontractors in conformity with the policies and principles relating to settlement of prime contracts in FAR subparts 49.1, 49.2 and 49.3. When subcontracts are terminated for reasons other than termination of this contract, the Contractor shall settle such subcontracts in general conformity with the policies and principles in FAR subparts 49.1, 49.2, 49.3 and 49.4. Each such termination shall be documented and consistent with the terms of this contract. Terminations which require approval by the Government shall be supported by accounting data and other information as may be directed by the Contracting Officer.

- (w) *Unclassified Controlled Nuclear Information.* Subcontracts involving unclassified uncontrolled nuclear information shall be treated in accordance with 10 CFR Part 1017.

I-30. 970.5204-23 STATE AND LOCAL TAXES (APR 1984)

- (a) The Contractor agrees to notify the Contracting Office of any State or local tax, fee, or charge levied or purported to be levied on or collected from the Contractor with respect to the contract work, any transaction thereunder, or property in the custody or control of the Contractor and constituting an allowable item of cost if due and payable, but which the Contractor has reason to believe, or the Contracting Officer has advised the Contractor, is or may be inapplicable or invalid;* and the Contractor further agrees to refrain from paying any such tax, fee, or charge unless authorized in writing by the Contracting Officer. Any State or local tax, fee, or charge paid with the approval of the Contracting Officer or on the basis of advice from the Contracting Officer that such tax, fee, or charge is applicable and valid, and which would otherwise be an allowable item of cost, shall not be disallowed as an item of cost by reason of any subsequent ruling or determination that such tax, fee, or charge was in fact inapplicable or invalid.
- * Requirement for notice may be broadened to include all State and local taxes which may be claimed as allowable costs when considered to be appropriate.
- (b) The Contractor agrees to take such action as may be required or approved by the Contracting Officer to cause any State or local tax, fee, or charge which would be an allowable cost to be paid under protest; and to take such action as may be required or approved by the Contracting Officer to seek recovery of any payments made, including assignment to the Government or its designee of all rights to an abatement or refund thereof, and granting permission for the Government to join with the Contractor in any proceedings for the recovery thereof or to sue for recovery in the name of the Contractor. If the Contracting Officer directs the Contractor to institute litigation to enjoin the collection of or to recover payment of any such tax, fee, or charge referred to above, or if a claim or suit is filed against the Contractor for a tax, fee, or charge it has refrained from paying in accordance with this article, the procedures and requirements of the article entitled "Litigation and Claims" shall apply and the costs and expenses incurred by the Contractor shall be allowable items of costs, as provided in this contract, together with the amount of any judgment rendered against the Contractor.
- (c) The Government shall hold the Contractor harmless from penalties and interest incurred through compliance with this clause. All recoveries or credits in respect of the foregoing taxes, fees, and charges (including interest) shall inure to and be for the sole benefit of the Government.

I-31. 970.5204-25 WORKMANSHIP AND MATERIALS (APR 1984)

- (a) *Grade of Workmanship and Materials.* Unless otherwise directed by the Contracting Officer or expressly provided for by specifications issued under this contract:
- (1) All workmanship shall be first class; and
 - (2) All articles, equipment and materials incorporated in the work are to be:
 - (i) New and of the most suitable grade of their respective kinds for the purpose;
 - (ii) In accordance with any applicable drawings and specifications; and
 - (iii) Installed to the satisfaction and with the approval of the Contracting Officer.

Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, the Contracting Officer shall decide the question of equality.

- (b) *Samples and Test Results.* If the Contracting Officer so requires, the Contractor shall submit for approval samples of or test results on any materials proposed to be incorporated in the work before making any commitment for the purchase of such materials.

I-32. 970.5204-27(b) CONSULTANT OR OTHER COMPARABLE EMPLOYMENT SERVICES (MAY 1989)

The Contractor shall require all employees who are employed full-time (an individual who performs work under the cost-type contract on a full-time annual basis) or part-time (50 percent or more of regular annual compensation received under terms of a contract with DOE) on the contract work to disclose to the Contractor all consultant or other comparable employment services which the employees propose to undertake for others pursuant to Appendix F. The Contractor shall transmit to the Contracting Officer all information obtained from such disclosures. The Contractor will require any employee who will be employed full-time on the contract work to agree, as a condition of participation in such work, that the employee will not perform consultant or other comparable employment services for another DOE Contractor in the same or related energy field or another organization except with the prior approval of the Contractor. If the Contractor believes, with respect to any employee who is employed full-time on the contract work, that any proposed consultant or other comparable employment service may involve: (1) a rate of remuneration significantly in excess of the employee's regular rate of remuneration; (2) a significant question concerning possible conflict with DOE's policies regarding conduct of employees of DOE's Contractors; (3) the Contractor's responsibility to report fully and promptly to DOE all significant research and development information; or (4) the patent provision of the Contractor's contract with DOE, the Contractor shall obtain the prior approval of the Contracting Officer for such consultant or other comparable employment service.

I-33. 970.5204-28 ASSIGNMENT (APR 1984)

Neither this contract nor any interest therein nor claim thereunder shall be assigned or transferred by the Contractor except as expressly authorized in writing by the Contracting Officer.

I-34. 970.5204-29 PERMITS OR LICENSES (APR 1984)

Except as otherwise directed by the Contracting Officer, the Contractor shall procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory, and political subdivision in which the work under this contract is performed.